

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

FTX TRADING LTD., *et al.*,¹

Debtors.

Chapter 11

Case No. 22-11068 (JTD)

(Jointly Administered)

Ref. Nos. 26029 & 26035

Hearing Date: October 7, 2024

**STATEMENT OF THE ADVERSARY CLASS ACTION PLAINTIFFS JOINING IN THE
DEBTORS' SUBMISSION IN SUPPORT OF CONFIRMATION OF THE SECOND
AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION**

Customers Austin Onusz, Cedric Kees van Putten, Nicholas J. Marshall and Hamad Dar, plaintiffs in the putative class action adversary proceeding on behalf of former customer-depositors of FTX Trading Ltd. ("FTX.com") and West Realm Shires Services Inc. (d/b/a "FTX.US") and their affiliated debtors (the "FTX Group" or "Debtors") entitled *Onusz et al. v. West Realm Shires, Inc. et al.*, Adv. Pro. No. 22-50513 (the "Adversary Class Action Plaintiffs"), by and through their undersigned counsel, hereby file this statement in support of the Debtors' request for confirmation of the *Second Amended Joint Chapter 11 Plan of Reorganization of FTX Trading Ltd. and Its Debtor Affiliates* (D.I. 26029) (together with its supporting documents and amendments, the "Plan").

Introduction

1. The Adversary Class Action Plaintiffs wholeheartedly agree with the Debtors that

¹ The last four digits of FTX Trading Ltd.'s and Alameda Research LLC's tax identification numbers are 3288 and 4063, respectively. Due to the large number of Debtors in these Chapter 11 Cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the Debtors' claims and noticing agent's website at <https://cases.ra.kroll.com/FTX>.

the outcome for customers and creditors of FTX provided by the Plan is remarkable given the circumstances surrounding FTX's bankruptcy less than two years ago, including the FTX Insiders' (defined below) criminal conduct, \$9 billion shortfall in fiat currency and digital assets relative to customer entitlements, commingling of assets, and lack of recordkeeping.

2. Through the extraordinary work of Debtors and their counsel, Debtors' Chief Executive Officer John J. Ray III, along with the extensive negotiations among major constituencies including the Adversary Class Action Plaintiffs on complex customer-property issues, the Plan projects that customers and non-governmental creditors will receive 100% of all distributable value and recoveries beyond par. Not surprisingly, the Plan has received overwhelming support from stakeholders in each class entitled to vote on the Plan.

3. In short, the Adversary Class Action Plaintiffs believe that the Plan—which is the best conceivable result for the largest cross-section of FTX Group stakeholders—should be approved, including, specifically, the customer property Plan Support Agreement (the “PSA”) made a part of the Plan.

Statement

4. The Adversary Class Action Plaintiffs have a significant interest in confirmation of the Plan on their own behalf and on behalf of the class of FTX.com and FTX.US customers upon whose behalf they pursued their class action adversary proceeding.

5. The Adversary Class Action Plaintiffs filed their class action adversary proceeding—*Onusz et al. v. West Realm Shires, Inc. et al.*—in this Court on December 27, 2022, against (i) FTX.US, FTX.com, and certain affiliated Debtors; and (ii) insiders Samuel Bankman-Fried, Caroline Ellison, Nishad Singh, and Gary Wang (collectively, the “FTX Insiders”) on behalf of a proposed class of customers of FTX.com or FTX.US who deposited fiat

and/or digital assets and were unable to withdraw, use, or otherwise access those assets following the collapse of the FTX Group due to the criminal conduct of the FTX Insiders.

6. The *Onusz* class action complaint—which was the first class action adversary complaint filed on behalf of customers—asserted claims for declaratory judgment against FTX.US, FTX.com, and certain affiliated Debtors that the deposited (and misappropriated) customer fiat and digital assets were not property of the estates, but rather customer property to which customers had priority (the “Customer Property Claims Issue”), as well as certain other common law claims. The next day, the Ad Hoc Committee of Non-US Customers of FTX.com (the “Ad Hoc Committee”)—comprised of international customers with accounts at FTX.com—filed an adversary proceeding similarly seeking, among other things, “Declaratory Judgment That Assets in Customer Accounts or Otherwise Identifiable as Customer Assets Are Not Property of the Estate.” *Ad Hoc Committee of Non-US Customers of FTX.com v. FTX Trading, Ltd. et al.*, Adv. Pro. No. 22-50514, *Complaint for Declaratory Judgment* (D.I. 1) ¶¶ 53-58.

7. Since the commencement of these Chapter 11 Cases, the Adversary Class Action Plaintiffs’ sole goal has been to maximize the recovery of misappropriated customer assets on behalf of themselves and all others similarly situated by, among other things, pursuing resolution of the Customer Property Claims Issue.

8. To that end, leading up to a series of full-day meetings on September 11 and 12, 2023—during which counsel for the Adversary Class Action Plaintiffs uniquely advocated for the interests of customers of FTX.US, whose interests were not aligned with the Ad Hoc Committee or the Official Committee of Unsecured Creditors (the “Official Committee”)—the Debtors provided extensive documents and diligence materials to the Adversary Class Action Plaintiffs,

the Ad Hoc Committee, and the Official Committee. Additional documents and diligence materials were provided at the meetings.

9. The meetings involved heavily contested negotiations to resolve the Customer Property Claims Issue and related issues in the bankruptcy proceedings. The parties continued to review diligence materials and related documents and negotiated these issues over the next month, resulting in another two-day negotiation session on October 11 and 12, 2023. Following these extensive, arm's-length negotiations, the various parties executed the PSA, which was announced on October 16, 2023 (D.I. 3291), to resolve the Customer Property Claims Issue (the "Customer Property Settlement").² More recently, the Adversary Class Action Plaintiffs worked with the Debtors to achieve a favorable settlement of their claims against FTX Insider Caroline Ellison that will separately be presented for approval, and which is expected to secure substantial additional benefits for the estates and stakeholders.

10. Among other things, the Customer Property Settlement—as incorporated into the Plan—provides that all assets held by the FTX.com and FTX.US exchanges are property of the Debtors' estates but that, upon Plan confirmation, holders of allowed Class 5A FTX.com customer claims and/or allowed Class 5B FTX.US customer claims shall receive payment in Cash in an amount equal to (i) 100% of such allowed claims; (ii) interest at the Consensus Rate on such allowed claims from the Petition Date through the applicable distribution date to the extent of available funds, plus (iii) any proceeds from the Supplemental Remission Fund.³ See Plan ¶¶ 4.3.6, 4.3.7.

² The PSA and Plan, if confirmed, will resolve all the Adversary Class Action Plaintiffs' class claims against the Debtors, whereas their contract, tort, and aiding and abetting claims against the FTX Insiders (other than Caroline Ellison, who has settled) remain pending.

³ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan.

11. The Adversary Class Action Plaintiffs believe the Plan represents the best possible outcome for customers and certain creditor constituencies alike, given that it maximizes value for all stakeholders, makes the recovery and distribution of customer funds a priority, provides recovery for customers in excess of their allowed claims, and avoids costly and time-consuming litigation that would otherwise be necessary to resolve the critical question of whether commingled customer assets are part of the Debtors' estates. Indeed, the Customer Property Settlement depends on confirmation of the Plan and will not constitute a compromise, settlement and resolution of all claims against the Debtors concerning customer property if the Plan is not confirmed or the Effective Date fails to occur.

12. The remarkable recovery for customers is underscored by the overwhelming support for the Plan. According to the supporting materials submitted by Debtors, 94.48% of the Class 5A FTX.com customers that submitted ballots voted to approve the Plan, representing 97.16% of the \$6.8 billion in allowed claims, and 89.10% of the Class 5B FTX.US customers that submitted ballots voted to approve the Plan, representing 97.50% of the \$60.9 million in allowed claims.⁴

Reservation of Rights

13. The Adversary Class Action Plaintiffs reserve their rights to appear and make additional arguments at the confirmation hearing.

⁴ See Declaration of James Daloia of Kroll Restructuring Administration LLC Regarding the Solicitation of Votes and Tabulation of Ballots Cast on the Joint Chapter 11 Plan of Reorganization of FTX Trading Ltd. and its Debtor Affiliates (D.I. 26045), Ex. A.

Conclusion

WHEREFORE, for the reasons stated herein and the reasons set forth in the Debtors' Confirmation Motion, the Adversary Class Action Plaintiffs respectfully request that the Court confirm the Plan and overrule any remaining objections to Plan confirmation.

Dated: October 3, 2024
 Wilmington, Delaware

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